

Employee Disability Toolkit:

YOUR GUIDE TO RIGHTS FOR INDIVIDUALS WITH DISABILITIES IN THE WORKPLACE

Question:	Answer:
What is disability discrimination?	Disability discrimination involves treating a <i>qualified individual with a disability</i> who is an applicant or employee unfavorably because of his or her disability. Further, disability discrimination exists if an agency fails to provide a <i>reasonable accommodation</i> for the known physical or mental limitations of a <i>qualified individual with a disability</i> , absent undue hardship. It can also exist if someone presumes someone has a disability and treats them less favorably because of this perception.
What is a disability?	A disability is a physical or mental impairment that <i>substantially limits one or more major life activities</i> . This is a legally defined term that has been interpreted by court decisions. Note: Not every physical or mental impairment rises to the level of a legally defined disability.
Who is an individual with a disability?	An individual with a disability is one who: <ul style="list-style-type: none">• Has a <i>physical or mental impairment</i> which <i>substantially limits</i> one or more major life activities; and/or• Has a record of such impairment; and/or• Is regarded as having such an impairment
What do you mean by substantially limits?	Courts have defined what constitutes a <i>substantial limitation</i> . In general this is measured by frequency or duration of the limitation as compared to a reasonable person standard.
What is a major life activity?	“Major life activities” refers to those activities that are of central importance to daily life as defined by court decisions.

<p>What are types of major life activities?</p>	<p>Courts have determined that <i>major life activities</i> include, but are not limited to: Walking, learning, seeing, working, hearing, concentrating, speaking, performing manual tasks, breathing, lifting, sleeping, interacting with others, caring for oneself, eating, standing, sitting, reaching, lifting, bending, breathing, reading, thinking, communicating, the operation of a major bodily function , etc. This is only a partial list and courts are constantly adding to this listing.</p>
<p>What do you mean by an individual who has a “record of an impairment?”</p>	<p>This is an individual who has a history of, or has been misclassified as having a mental/physical impairment. An individual with a <i>record of an impairment</i> may be entitled, absent undue hardship, to a reasonable accommodation if needed and related to the past disability. Eg. An employee with an impairment that previously limited, but no longer substantially limits a major life activity may need leave or a schedule change to permit them to attend follow-up appointments with a health care provider.</p>
<p>Who is a “qualified individual with a disability”</p>	<p>A qualified individual with a disability is a person with a disability who: Satisfies the requisite skill, experience, education, or other requirements of the employment position such individual holds or seeks, and who can perform the <i>essential functions</i> of the position with or without reasonable accommodation.</p>
<p>What law(s) are violated by disability discrimination?</p>	<p>Disability discrimination violates Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disability Act (ADA), and the Americans with Disability Act Amendment Act (ADAAA) of 2008.</p>
<p>What is a reasonable accommodation?</p>	<p>A reasonable accommodation is any change in the work environment (or in the way things are customarily done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits or privileges of employment.</p>

<p>What are some types of reasonable accommodations?</p>	<p>Reasonable accommodations might include:</p> <ul style="list-style-type: none"> • Providing readers or interpreters • Assistive Devices • Modifying work sites • Modifying work schedules • Flexi-time • Accessible facilities • Telework • Reassignment (accommodation of last resort)
<p>What are essential functions?</p>	<p>Essential functions are the basic job duties that an employee or applicant must be able to perform, with or without reasonable accommodation. Essential functions are the fundamental, crucial job duties performed in a position. They do not include marginal functions, which are extra or incidental duties. A function may be essential because:</p> <ol style="list-style-type: none"> 1. The position exists to perform that function. 2. There are limited number of employees available who could perform that function. 3. The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.
<p>How should an employee request a reasonable accommodation?</p>	<p>An employee should request a reasonable accommodation from his or her supervisor. The request may be made orally or in writing. The request can also be made on behalf of the employee by a family member, a health practitioner or their representative.</p>
<p>Can the manager request medical documentation as a part of their consideration of my request?</p>	<p>Yes, a manager can ask for medical documentation related to the specific medical condition that is necessitating the employee to ask for a reasonable accommodation. The employee should be prepared to submit supporting medical documentation to the supervisor so that they can make an informed decision on your request for reasonable accommodation. If the employee's medical condition is an obvious condition then the employer should not need to ask for medical documentation.</p>

Is my manager entitled to see my medical documentation?	Yes, your manager needs to see the medical documentation to determine if you are a <i>qualified individual with a disability</i> as defined by law. And also so that they may understand the nature and severity of your condition so that they can provide an appropriate reasonable accommodation to assist you. As the deciding official on your request, they have a need to know and see this information.
What if I don't provide my medical documentation when it is requested?	Then potentially your request for a reasonable accommodation can be denied for failure to provide medical documentation. It is the employee's burden to provide the supporting documentation to enable the manager to make a decision on the request.
Does my manager have to provide me with the specific accommodation that I am seeking?	No, the manager must only provide you with an accommodation that is reasonable and which will allow you to perform the essential functions of your position. But they do not have to provide you with the specific accommodation that you are seeking.
Does my manager have to reduce my production standards to accommodate my needs?	If the production standards are <i>essential</i> to the position, then the manager does not have to reduce production standards in order to accommodate an employee with a disability. The idea is to provide the employee with an accommodation that allows them to perform the <i>essential functions</i> of the position. And this would include production standards that are <i>essential</i> .
What course of action can an employee take if denied a reasonable accommodation?	If an employee believes their reasonable accommodation request was denied due to discrimination then he or she has a right to file an EEO complaint and may contact the Office of Equity, Diversity and Inclusion within 45 calendar days of the denial.

<p>What course of action should a victim of disability discrimination in the form of harassment take?</p>	<ol style="list-style-type: none"> 1. The employee or applicant should first attempt addressing his or her concerns with the alleged offender and inform the harasser that the conduct is unwelcome and must stop immediately. 2. If confronting the alleged offender is ineffective the employee or applicant should report the behavior as soon as possible to a managing official. 3. An employee or applicant may initiate the administrative inquiry process by contacting a supervisor who will conduct an investigation intended to gather information to determine what action, if any, should be taken. This information is not intended for legal or criminal prosecution. 4. Employees and applicants should also maintain a record of relevant events and communications between all parties involved in the event another incident arises and further action is needed.
<p>Is an employee or applicant who brings a disability discrimination claim protected from retaliation/ reprisal?</p>	<p>Yes. The NIH is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. If an employee wishes to file an EEO complaint of reprisal he or she may contact the Office of Equity, Diversity and Inclusion within 45 calendar days of the alleged occurrence(s) of retaliation discrimination.</p>

Area:	Key Points:
Protection	<ul style="list-style-type: none"> • Must be a “qualified individual with a disability” to be protected from employment disability discrimination under the law.

Disability	<ul style="list-style-type: none"> • Determination of whether an individual has a disability is made on a case-by-case basis.
Practices and activities	<ul style="list-style-type: none"> • Disability discrimination is prohibited in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.
EEO activity	<ul style="list-style-type: none"> • Making a request for a reasonable accommodation is considered participation in the EEO process.
Reasonable Accommodation	<ul style="list-style-type: none"> • A qualified individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. • Once a reasonable accommodation request is made the manager and the qualified individual with a disability should engage in an interactive process to clarify what the individual needs and identify the appropriate reasonable accommodation. • The reasonable accommodation provided must be effective, not the accommodation of choice.
Performance	<ul style="list-style-type: none"> • A request for a reasonable accommodation does not require an employer to excuse past misconduct or poor performance.
Job functions	<ul style="list-style-type: none"> • An employee or applicant must be able to perform the essential functions of their position or desired position with or without reasonable accommodation.
Confidentiality	<ul style="list-style-type: none"> • Medical information about all applicants and employees must be kept confidential.

What You Should Know, but Probably Don't

Persons discriminated against because they have a known association or relationship with a disabled individual are protected.

Case Examples

Addresses:	Case:
Impermissible Dissemination of Medical Information	<i>Price v. USPS</i>
Disability-Based Harassment	<i>Rainbolt v. Department of Transportation</i>
No Disability Discrimination: Failure to Meet Qualification Standards	<i>Patrick Jean-Julien v. Department of State</i>
Failure to accommodate	<i>Haggard v. United States Postal Service</i>

Contacts:

WHO TO ASK ABOUT WHAT

[Division of Complaints Management and Resolution](#)

[Identify Your Formal Complaints Specialist](#)

[Office of Equal Opportunity and Diversity Management contact](#)

[NIH Ombudsman contact](#)

Resources:

WHERE TO GO FOR MORE INFORMATION

[Title VII of the Civil Rights Act of 1964](#)

[The ADA: Questions and Answers](#)

[NIH Policy Manual 2204-Reasonable Accommodations](#)

[HHS Reasonable Accommodation Policy and Procedures Manual](#)

[EEOC Enforcement Guidance: Reasonable Accommodation](#)

[Your Employment Rights as an Individual With a Disability](#)

[Job Applicants and the ADA](#)

[ABCs of Schedule A Documents](#)

[Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)

[The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act
of 1964](#)